

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3925 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3926 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3927 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3929 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3930 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3931 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3934 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3935 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3939 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3942 of

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with
SPECIAL CIVIL APPLICATION NO. 3947 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3949 of 1990
with
SPECIAL CIVIL APPLICATION NO. 3952 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

BHASKAR JAYRAMBHAI PATEL & ORS.

Versus

STATE OF GUJARAT

Appearance:

Kum. V.P. Shah, Senior Advocate, with Shri P.J.
Bhatt, Advocate, for the Petitioner (in all matters)

Shri M.R. Anand, Govt. Pleader (Senior Counsel)
with Shri T.H. Sompura, Asst. Govt. Pleader, for
the Respondent (in all matters)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 24/04/96

ORAL JUDGEMENT

Practically identical orders are challenged in all these petitions. Common questions of law and fact are found arising in all of them. I have therefore thought it fit to dispose of all of them by this common judgment of mine.

2. The petitioner in each case has challenged the order passed by the Deputy Collector of Dabhoi some time in August/September 1983 as affirmed in appeal by the order passed by the Collector of Baroda some time during Feurbary, April, May and September 1984 as further affirmed n revision by the State Government (the respondent) by the order passed some time on 11th and 20th January 1988 and on 11th April 1988 in one case. By his impugned order, the Deputy Collector of Dabhoi cancelled the mutation entry made and certified in the record of right pertaining to the subject-matter of each petition some time during January, August, September and November 1982.

2. The facts giving rise to these petitions move in a narrow compass. Each petitioner purchased the respective subject-matter of each petition by a registered sale deed executed some time during the period from April 1981 to October 1981. Thereafter each petitioner moved the concerned Talati for mutation of his name in the record of right pertaining to the subject-matter of each petition. In each case the entry was made and certified during the period from January

1982 to November 1982 by the Mamlatdar of Vaghodia. It appears to have come to the notice of the Deputy Collector at Dabhoi. He appears to have found each entry not according to law. A show-cause notice thereupon came to be issued to each petitioner sometime during May and September 1983 calling upon each petitioner to show cause why the aforesaid mutation entry certified by the Mamlatdar Mamlatdar of Vaghodia should not be revised. A copy of the show-cause notice is at Annexure B to each petition. Thereafter by the order passed some time during August/September 1983, the Deputy Collector set aside the aforesaid mutation entry certified by the Mamlatdar, Vaghodia in each case. Its copy is at Annexure D to each petition. Each aggrieved petitioner carried the matter in revision before the Collector of Baroda under Rule 108(6) of the Gujarat Land Revenue Rules, 1972 (the Rules for convenience) framed under the Bombay Land Revenue Code, 1879 (the Code for brief). By his order passed some time during the period from February to September 1984, the Collector of Baroda rejected it. Its copy is at Annexure E to each petition. Each aggrieved petitioner carried the matter in further revision before the respondent under rule 108(6A) of the Rules. By the order passed by and on behalf of the respondent on 11th and 20th January 1988, and on 11th April 1988 separately, each revisional application came to be rejected. Its copy is at Annexure F to each petition. Each aggrieved petitioner has thereupon approached this Court by means of each one's respective petition under art. 226 of the Constitution of India for questioning the correctness of the orders at Annexures D, E and F to each petition.

4. Learned Government Counsel Shri Anand for the respondent has raised a preliminary contention regarding maintainability of these petitions under art. 227 of the Constitution of India. Thereupon learned Counsel Kum. Shah for the petitioners has orally applied for leave to convert this petition as also under 226 of the Constitution of India. Such oral request is accepted and each petition is ordered to be treated as also under art. 226 of the Constitution of India on condition of payment of the deficit court-fees, if any, within two weeks from today.

5. Learned Counsel Kum. Shah for the petitioner has submitted that the mutation entry could not have been set aside in exercise of the revisional powers after expiry of the reasonable period of 3 months from the date of its certification in view of the binding ruling of the Supreme Court in the case of State of Gujarat v. Patel

Raghav Natha and others reported in (1969) 10 G.L.R. 992. She has further urged that the Deputy Collector had no jurisdiction to examine whether or not the transaction was hit by any provision contained in any other enactment. According to her, if the transaction was in contravention of any other statutory provision contained in some other enactment, the competent officer named therein could have initiated action for annulment of such transaction but that point could not be decided in any collateral proceeding. Kum. Shah for the petitioner has further urged that, in view of the scheme of the Rules, the Deputy Collector has no revisional powers for examining correctness of any mutation entry made under the relevant provisions contained in Chapter 10A of the Code. As against this, learned Government Counsel Shri Anand for the respondent has urged that, when the transaction on the basis of which a mutation entry is effected in the revenue records is found to be in contravention of a statutory provision, it would be open to the revenue authorities to refuse to certify such transaction and, if it is certified and it is brought to the notice of the higher authority, he has power to cancel it in exercise of his revisional jurisdiction. Learned Government Counsel Shri Anand for the respondent has further urged that the Deputy Collector has been empowered under the Rules to exercise revisional jurisdiction over the mutation entries certified by the Mamlatdar. It has also been urged by learned Government Counsel Shri Anand for the respondent that, when the transaction on the basis of which a mutation entry is sought to be made and certified is found to be illegal, invalid, null or void, it would be open to the revenue authorities to cancel the entry within the reasonable period of time which could be beyond a period of one year.

6. In the aforesaid binding ruling of the Supreme Court in the case of Patel Raghav Natha (supra) it has been held that the revisional powers under sec. 211 of the Code cannot be exercised beyond a reasonable period of 3 months. The aforesaid ruling of the Supreme Court is binding to this Court. It cannot be distinguished on the ground that it was in the context of what is popularly known as the N.A. permission and provisions regarding mutation entries were not considered therein in view of the binding ruling of the Supreme Court in the case of Ballabhdas Mathurdas Lakhani and others v. Municipal Committee, Malkapur reported in AIR 1970 SC 1002.

7. It cannot be gainsaid that revisional powers

under the relevant provisions contained in Rule 108(6) of the Rules are akin to those contained in sec. 211 of the Code. What applies to sec. 211 of the Code would apply with equal force to rule 108(6) of the Rules.

8. In each petition the revisional powers have been exercised by the Deputy Collector beyond 3 months after the concerned mutation entry was made and certified by the concerned Mamlatdar. This he could not have done in view of the aforesaid binding ruling of the Supreme Court in the case of Patel Raghav Natha (supra). In that view of the matter, the impugned order at Annexure D to each petition cannot be sustained in law. An order affirming an illegal and invalid order is of no consequence. In that view of the matter, the impugned orders at Annexures E and F to each petition affirming the impugned order at Annexure D to each petition cannot therefore be sustained in law.

9. Even if it is assumed for the sake of argument that the aforesaid binding ruling of the Supreme Court in the case of Patel Raghav Natha (supra) will not be applicable in the present case, the impugned orders cannot be sustained in law in view of the submission urged before me by learned Counsel Kum. Shah for the petitioner in each case to the effect that the revenue authorities have no jurisdiction to decide that the transaction on the basis of which the concerned mutation entry is made is in contravention of any statutory provision contained in any other enactment.

10. This very point arose in Special Civil Application No. 3928 of 1990 and allied matters decided on 19th April 1996. Relying on the earlier ruling of this Court, it has been held therein that the authorities taking up what is popularly known as the RTS proceeding have no power to decide the validity of a transaction on the touchstone of any statutory provision contained in some other enactment. If any such question arises, the proper procedure would be to stay the hands till the authority empowered in the very other enactment decides the validity or otherwise of the transaction on the basis of which the mutation entry is sought. In view of the aforesaid ruling of this Court, it is not necessary to deal with the submission elaborately as it has already been answered therein.

11. Since I am taking this view of the matter, it is not necessary for me to deal with the submission urged before me by learned Counsel Kum. Shah for the petitioner to the effect that, under the scheme of the

Rules, the Deputy Collector has no power of revision qua the entries certified by the Mamlatdar.

12. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures D, E and F to each petition cannot be sustained in law. They have to be quashed and set aside.

13. In the result, each petition is accepted. The impugned orders at Annexures D, E and F to each petition are quashed and set aside. This judgment of mine shall not preclude the concerned authority to take action according to law for examining the validity of the transaction in each case if it is so permissible and desirable after so many years. Rule in each petition is accordingly made absolute with no order as to costs.
